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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,899	05/31/2001	Mark E. Wilson	834460-68474	1013

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BARNES & THORNBURG
11 SOUTH MERIDIAN
INDIANAPOLIS, IN 46204

EXAMINER

JIANG, SHAOJIA A

ART UNIT PAPER NUMBER

1617

DATE MAILED: 06/02/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/870,899

Applicant(s)

WILSON ET AL.

Examin r

Shaojia A. Jiang

Art Unit

1617

-- The MAILING DATE of this communication appears on th cover sheet with the c rrespondence address --

Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-20,23,25,41,71 and 72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-20,23,25,41,71 and 72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachm nt(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

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DETAILED ACTION

This Office Action is a response to Applicant's amendment and response filed on May 9, 2003 are entered in Paper No. 12 wherein claims 7, 21-22, 24, 26-40, and 42-70 are cancelled, and claims 1-6, 8-20, 23, 25, and 41 have been amended.

Currently, claims 1-6, 8-20, 23, 25, 41, and 71-72 are pending in this application.

In view of the new ground of rejection (below), **the finality of that action January 29, 2003 is withdrawn.**

In view of Applicant's remarks filed on May 9, 2003 in Paper No. 12 with respect to the rejection of claims 1-20, 25, 41(in part), 60-62, 65, 67, 69 (in part), and 70-72 made under 35 U.S.C. 103(a) of record in the previous Office Action January 29, 2003 have been considered, and this rejection is withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 12-13, 15-17, 19-20, 23, 25, 41, and 71-72 are rejected under 35 U.S.C. 102(b) as being anticipated by Fritsche et al. (AS, PTO-1449 submitted February 15, 2002).

Fritsche et al. discloses that fish oil compositions (menhaden fish oil) which is known to comprise C20 and C22 omega-3 fatty acids including eicosapentaenoic acid

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and also comprise omega-6 fatty acids (see abstract, especially Table 1 at the left column of page 1842, and Table 2 at the right column of page 1843) are useful in dietary compositions to feed sows (female swine) including gestation until farrowing and lactation and methods of the treatment to benefit sow's performance in maternal period including gestation until farrowing and lactation, and benefit pig survival, number of pigs born per sow, birth weight and weaning weights (see title of the article, abstract, Introduction, and working examples in "Animals and Diets" at the right column of page 1841 to the left column of page 1842). Fritsche et al. also discloses the effective amounts of fish oil in the feed compositions to be administered daily, e.g., 3.5 or 7.0%, and vitamin mix (known antioxidants) in the feed compositions (see abstract, especially Table 1 at the left column of page 1842).

Fritsche's method inherently increase the reproductive performance of a female swine, increase the number of live births to a female swine, increase the total number of births to a female swine, increase the farrowing rate of a female swine, or increase the reproductive performance of a breeding population of a female swine, as claimed herein since Fritsche's method steps are same as the instant method steps, administering to a female swine (i.e., a sow including gestation until farrowing and lactation). See *Ex parte Novitski*, 26 USPQ 2d 1389. See also *Eli Lilly and Co. v. Barr Laboratories Inc.* 251 F3d. 955; 58 USPQ2d 1869-1881 (Fed. Cir. 2001) with regard to inherency as it related to the claimed invention herein.

Thus, Fritsche et al. anticipates claims 1-3, 5, 12-13, 15-17, 19-20, 23, 25, 41, and 71-72.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 6, 8-11, 14, and 18, even though these claims are not anticipated by Fritsche et al. as applicable to claims 1-3, 5, 12-13, 15-17, 19-20, 23, 25, 41, and 71-72, are rejected under 35 U.S.C. 103(a) as being unpatentable over the same reference by Fritsche et al in view of Boudreaus et al. (HY, PTO-1449 submitted February 15, 2002).

The same disclosure of Fritsche et al. has been discussed in the 102(b) rejection.

Fritsche et al. does not expressly disclose the particular fish oil such as salmon oil, and the particular amounts (percentage) of fish oil, and the ratio of omega-6 to omega-3 fatty acids, and the particular time for the administration such as about 30 days before a first mating through a second mating, and stabilizing the fish oil by prilling.

Boudreaus et al. discloses the range of ratio of omega-6 to omega-3 fatty acids in dietary compositions (overlapping with the instant claim) (see abstract and page 126).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to determine the particular amounts (percentage) of fish oil such as salmon oil and the particular time for the administration such as about 30 days before a first mating through a second mating, and to stabilize the fish oil by prilling.

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One having ordinary skill in the art at the time the invention was made would have been motivated to determine the particular amounts (percentage) of fish oil such as salmon oil and the particular time for the administration such as about 30 days before a first mating through a second mating since the effective amounts up to 3.5 or 7% of fish oil in the feed composition of Fritsche et al. are known in the art. Salmon oil is well known to contain C20 and C22 omega-3 fatty acids and omega-6 fatty acids. C20 and C22 omega-3 fatty acids and omega-6 fatty acids are known to benefit female swine performance. Therefore, one of ordinary skill in the art would have found it obvious to employ Salmon oil as fish oil and determine the particular amounts (percentage) of fish oil and the time for the administration such as about 30 days before a first mating through a second mating based the prior art teachings.

It has been held that it is within the skill in the art to select optimal parameters, such as amounts of ingredients, in a composition in order to achieve a beneficial effect. See *In re Boesch*, 205 USPQ 215 (CCPA 1980). Hence, the determination of the particular amounts (percentage) of fish oil and the particular time for the administration is considered well within the skill of artisan.

Further, one of ordinary skill in the art would have found it obvious to stabilize the fish oil in the feed by prilling since prilling is known as an art recognized technique for stabilizing fish oil.

Thus the claimed invention as a whole is clearly prima facie obvious over the teachings of the prior art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 14-16, 19-20, 23, 25, 41, and 71-72, are rejected under 35 U.S.C. 103(a) as being unpatentable Abayasekare et al. (QW, PTO-1449 submitted February 15, 2002).

Abayasekare et al. discloses that dietary fatty acid compositions, i.e., fish oil, comprising instant fatty acids (see particularly Fig 1 at page 277) are useful in increasing the female performance, i.e., follicular development in the ovary, ovulation, corpus luteum function, pregnancy, parturition, and lactation (see abstract, page 279-282).

Abayasekare et al. does not expressly disclose the dietary fatty acid compositions therein to be administered to female swine.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to administer the dietary fatty acids to the particular female, swine in methods of increasing the reproductive performance of a female swine, increasing the number of live births to a female swine, increasing the total number of births to a female swine, increasing the farrowing rate of a female swine, or increasing the reproductive performance of a breeding population of a female swine.

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One having ordinary skill in the art at the time the invention was made would have been motivated to administer the dietary fatty acids to the particular female, swine in methods of increasing the reproductive performance of a female swine, increasing the number of live births to a female swine, increasing the total number of births to a female swine, increasing the farrowing rate of a female swine, or increasing the reproductive performance of a breeding population of a female swine, since it is known that dietary fatty acid compositions, i.e., fish oil, comprising essential fatty acids are useful in increasing the female performance, i.e., follicular development in the ovary, ovulation, corpus luteum function, pregnancy, parturition, and lactation, according to Abayasekare et al. One of ordinary skill in the art would acknowledge that female performance taught by Abayasekare et al. would encompass female swine. Therefore, one of ordinary skill in the art would have found it obvious to employ these fatty acids dietary composition to feed female swine for increasing the reproductive performance of a female swine, increasing the number of live births to a female swine, increasing the total number of births to a female swine, increasing the farrowing rate of a female swine, or increasing the reproductive performance of a breeding population of a female swine, with the reasonable expectation of success.

Thus the claimed invention as a whole is clearly prima facie obvious over the teachings of the prior art.

Applicant's arguments filed on May 9, 2003 in Paper No. 12 with respect to the rejection of claims 1-20, 25, 41(in-part), 60-62, 65, 67, 69 (in part), and 70-72 made

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under 35 U.S.C. 103(a) of record in the previous Office Action January 29, 2003 have been considered but are moot in view of the new ground(s) of rejections presented above.

In view of the rejections to the pending claims set forth above, no claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

S. Anna Jiang, Ph.D.
Patent Examiner, AU 1617
May 28, 2003



SREENI PADMANABHAN
PRIMARY EXAMINER

(SPE/1617) 6/2/03